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MEMORANDUM

October 2, 2020

To: TRIBAL HOUSING CLIENTS

From: Ed Clay Goodman
HOBBS, STRAUS, DEAN & WALKER, LLP

Re: *NAIHC Legislative Committee Meeting – October 1, 2020*

On October 1, 2020, the National American Indian Housing Council (“NAIHC”) convened a Legislative Committee Call via Zoom. The meeting was presided over by NAIHC Executive Director Tony Walters. The next Legislative Committee Call is scheduled for November 5th, 2020. The updates below are a synthesis of information provided during the call and other updates we have received.

I. Congressional Updates

a. FY 2021 Appropriations, November Elections, and the "Lame Duck".

The House of Representatives and the Senate passed HR 8337, a Continuing Resolution (“CR”), to provide funding to keep federal agencies running through December 11, 2020, at largely *FY 2020 terms and spending levels*. The President signed it into law on October 1, 2020.

The CR is designed to give Congress leeway to continue negotiating the FY 2021 spending bills even after the beginning of the new fiscal year (October 1, 2020). None of the twelve FY 2021 appropriations bills have yet been enacted into law, although the House has approved ten of them, including passage of the bill which includes the Interior, Environment, and Related Agencies funding. The Senate Appropriations Committee has not yet marked up any of its FY 2021 appropriations measures. However, we understand that the Senate will post proposed spending levels on its website and these will be used as a negotiations marks for conferencing with the House on full year FY 2021 appropriations bills.

Congress will not be in session for most of October and is set to return on November 9, after the elections. This period of time after the elections but before January, when new Members of Congress (and/or a new Administration) are sworn in, is often referred to as the "lame duck" session. This will be another intense period of appropriations work, but depending on the outcome of the elections, Democrats in Congress may try to pass another CR to fund the federal government until the new Congress is sworn in, thus giving the incoming Congress the opportunity to shape FY 2021 appropriations more to their liking.

Mr. Walters noted that NAIHC always advocates for increases over past-year funding for tribal housing for each appropriations budget. However, given the COVID-19 pandemic and the obstacles caused by this being an election year, it is unlikely that funding for tribes will be raised above FY2020 funding for the FY2021 Appropriations.

b. Coronavirus Relief.

At this point, all of the ICDBG-CARES and IHBG-CAREs grants have been awarded. The House and Senate have been debating a new, Phase 4 COVID-19 relief package but have been unable to come to an agreement. There is a large discrepancy between the House and Senate versions of the new Phase 4 relief package, not the least of which is the funding level of two bills.

The latest, updated version of the House HEROES Act is still being negotiated between the House and the White House. The updated HEROES Act bill provides for \$2.2 trillion in funding, which is much larger than the \$1 trillion provided for in the Senate bill released earlier this summer. The May 2020 version of the HEROES Act bill did not contain any tribal housing funding, but the current version does:

- \$400 million for tribal housing programs
 - \$150 million for Indian Housing Block Grants (“IHBG”)
 - \$250 million for Indian Community Development Block Grants – Imminent Threat (“ICDBG”)
- Emergency Rental and Utilities Assistance
 - \$50 billion total
 - \$1 billion for tribes through set aside (2%)
 - 3 years to spend funding
- Mortgage Assistance
 - \$21 billion total
 - \$1.05 billion for tribes through set aside (5%)
 - 10 years to spend funding

The Senate will likely reject the House HEROES Act bill, given the amount of funding. However, if the White House agrees to a funding amount, the Senate may follow and pass the bill, but that is far from certain. We note that the Senate Republicans’ Phase 4 proposal of the \$1 trillion HEALS Act, released July 28, 2020, did not include any tribal set asides and was much more narrowly tailored (see our memo of July 30, 2020). NAIHC is continuing to advocate for tribal housing funding to be included in any new COVID-19 relief package.

Mr. Walters encouraged tribal members and advocates to talk to their Senators or Representatives, using the same talking points as were addressed in the NAIHC July 2020 advocacy campaign for CARES Act funding for tribal housing. NAIHC will be updating its website with resources for this continued advocacy.

One caller raised a question of whether any tribe has had success obtaining direct funding from states for tribal housing. The caller's experience is that the state programs are not experienced in working with tribes, and the programs are often not suited to providing services in tribal communities, which creates barriers to the willingness of states to provide funding to tribes.

Another caller responded that most states have not been providing funding to tribes. He noted that South Dakota recently realized that it had a significant amount of unsolicited funding from the CARES Act. The state legislature was supposedly going to hold a meeting this week to determine how to allocate the excess funding. It appears likely that the state will not directly fund any tribes that have directly received CARES Act funding, but that the state would provide grants to tribal nonprofits and tribes that have not already receiving CARES Act funding. The state is also considering allocating the funding to Community Development Financial Institution ("CDFIs") but is not really interested in working with tribes directly. The caller also noted that there is no statutory barrier to states providing funding to tribes. The unwillingness of many states to do so is likely more of a political issue and an intent to not have to deal with potentially duplicating expenses through CARES Act funding. States often opt to funnel housing funds through the state housing or finance authority. It is up to the tribes to work with these agencies, rather than directly with the state, to obtain any tax credits or other housing funds. Mr. Walters noted that because tribes can obtain housing funds directly through the U.S. Department of Housing and Urban Development ("HUD"), many state and federal agencies do not focus on providing funds directly to tribes.

c. NAHASDA Reauthorization and Tribal HUD-VASH Bill.

As of this writing, the House Native American Housing Assistance and Self Determination Act ("NAHASDA") reauthorization bills in both the House and Senate have not moved forward since our last update. NAIHC will continue its efforts to advocate for both House and Senate versions of the bills until one of them is passed. NAIHC hopes that tribes and tribal advocates provide as much support as possible for both bills, either as standalone bills or as amendments to other separate bills. We understand that during the lame duck session there will be another push to get a NAHASDA reauthorization bill passed. NAIHC initiated a campaign two weeks ago to have NAIHC members write letters to Senators about the Senate NAHASDA bill. That campaign is still live, so tribal members and advocates can still access those links.

There has also not been much progress on the Tribal HUD-VASH bill or the Continuum of Care bill. The Tribal HUD-VASH bill passed the Senate twice and is now being considered in the House. There will be a similar push during the lame duck session this fall to have the Tribal HUD-VASH bill pass in the House as a standalone bill. Additionally, the Continuum of Care bill (HR 4029) has not progressed since February 2020. The bill passed the House and is still being considered by the Senate. The bill would make tribes eligible for the HUD Continuum of Care Program. NAIHC is continuing its advocacy efforts on both bills and will be reaching out to HUD to see what support NAIHC can provide to move the bills forward.

Mr. Walters noted that there will likely be a HUD call for training and technical assistance for the HUD-VASH programs. NAIHC will send more information on this as it becomes available.

d. Legislation to Address Federal Funding Shortfall for Tribes.

As we reported in our September NAIHC Legislative Committee memo, Senator Elizabeth Warren (D-MA) and Representative Deb Haaland (D-NM) continue their efforts, in response to the U.S. Commission on Civil Rights' report, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, to enact legislation that would address the funding gaps, shortages, and inefficiencies in federal funding for Native American communities. As part of that effort, Senators Warren and Haaland will likely be drafting a comprehensive bill for Indian Country that addresses various issues on the federal lack of funding for tribes. Among other things, the bill will likely include updated funds for IHBG and ICDBG grants and provisions relaxing restrictions in NAHASDA that prevent Tribes from accessing other HUD programs. The draft of the bill is expected to be released in the spring of 2021. The bill would also allow tribes to access tenant-based Section 8 housing.

II. HUD Grants

On August 11, 2020, HUD published a Dear Tribal Leader Letter, announcing the fiscal year ("FY") 2020 Notice of Funding Availability ("NOFA") for the IHBG-Competitive Grant Program. The Letter stated that projects that will spur housing construction and rehabilitation will be prioritized. Because of the challenges arising from the ongoing COVID-19 pandemic, HUD is providing a longer application period than the application period in last year's competition to allow applicants additional time to develop and submit applications. Therefore, applicants will have until 11:59:59 EST on December 10, 2020, to submit applications via <https://www.grants.gov>. If applicants are unable to submit an electronic application, they may request a waiver in accordance with Section IV.A. of the NOFA <https://www.grants.gov/web/grants/view-opportunity.html?oppId=328626>.

On September 29, 2020, HUD published Notice PIH 2020-27, which notified tribes and Tribally Designated Housing Entities ("TDHEs") that, due to the ongoing COVID-19 pandemic, HUD is waiving the Undisbursed Funds Factor ("UDFF") at 24 CFR § 1000.342 with respect to the IHBG program allocation formula. Normally, the UDFP requires that, for any tribe that receives \$5 million or more in IHBG funds, if the tribe has undisbursed IHBG funds in an amount that is greater than the sum of the prior 3 years' initial allocation calculations ("undisbursed funds") by October 1st of the fiscal year for which the allocation is made, that tribe's IHBG formula allocation would be reduced for the next fiscal year. Because of the waiver of the UDFP for FY2021, tribes and TDHEs will not face a reduction of their FY 2021 IHBG formula allocation if they have undisbursed IHBG funds as of October 1, 2020. The waiver only affects the FY2021 IHBG formula allocations and does not apply to IHBG formula allocations in years beyond FY2021.

III. Other Matters

a. Legal Symposium.

The NAIHC Legal Symposium will be held on December 7, 8, and 9 of 2020. Due to the COVID-19 pandemic, the Symposium's sessions will be held virtually to allow greater (and safer) participation.

b. Members' Meeting

NAIHC has sent out a questionnaire about holding an NAIHC Members' Meeting, asking whether NAIHC should move forward with a virtual meeting or whether it should wait to hold it until May 2021. Mr. Walters urged NAIHC members to respond to the questionnaire and to communicate with NAIHC about their thoughts on holding the next Members' Meeting.

c. Announcements

NAIHC is developing an updated website so that all bills related to COVID-19 relief will be listed for tribal members to look through. The next two NAIHC Legislative Committee meetings are scheduled for Thursday, November 5 and Thursday, December 3. NAIHC will continue to host the call via a Zoom platform for the next call. NAIHC will play the November 5th call by ear depending on issues that may arise due to the election.

The census deadline is Monday October 5. Mr. Walters urges everyone to share the deadline and importance of the census with their members. Tribes are often undercounted and there is a concern of this happening this year as well.

Conclusion

If you have any questions about this memo, please contact Ed Clay Goodman at 503-799-3924 or at egoodman@hobbsstraus.com.